

## Office of the Secretary, Interior

## § 4.438

of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the examiner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

### § 4.433 Authority of the administrative law judge.

The administrative law judge is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken for the purpose of taking testimony but not for discovery in accordance with the Act of January 31, 1903 (32 Stat. 790; 43 U.S.C. 102 through 106), to administer oaths, to call and question witnesses, to make proposed findings of fact and to take such other actions in connection with the hearing as may be prescribed by the Board in referring the case for hearing. The issuance of subpoenas, the attendance of witnesses, and the taking of depositions shall be governed by §§ 4.423 and 4.26 of the general rules of subpart B of this part.

### § 4.434 Conduct of hearing.

So far as not inconsistent with the prehearing order, the examiner may seek to obtain stipulations as to material facts. Unless the administrative law judge directs otherwise, the appel-

lant will present his evidence on the facts at issue following which the other parties and the Bureau of Land Management will present their evidence on such issues.

### § 4.435 Evidence.

(a) All oral testimony shall be under oath and witnesses shall be subject to cross-examination. The administrative law judge may question any witnesses. Documentary evidence may be received if pertinent to any issue. The administrative law judge will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the administrative law judge. Such rulings will be considered, but need not be separately ruled upon, by the Board in connection with its decision. Where a ruling of an administrative law judge sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence and the objecting party may then make an offer of proof in rebuttal.

### § 4.436 Reporter's fees.

Reporter's fees shall be borne by the Bureau.

### § 4.437 Copies of transcript.

Each party shall pay for any copies of the transcript obtained by him. Unless a summary of the evidence is stipulated to, the Government will file the original copy of the transcript with the case record.

### § 4.438 Summary of evidence.

The parties and the Bureau may, with the consent of the administrative law judge, agree that a summary of the evidence approved by the examiner may be filed in the case in lieu of a transcript. In such case the administrative law judge will prepare the summary or have it prepared and upon agreement of the parties make it a part of the case record.